

ESTTA Tracking number: **ESTTA600214**

Filing date: **04/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	MLE Fitness LLC		
Entity	Limited liability company	Citizenship	Florida
Address	1064 Theodore Ave. Jacksonville Beach, FL 32250-3169 UNITED STATES		

Attorney information	G. Luke Ashley Thompson & Knight LLP 1722 Routh Street Ste. 1500 Dallas, TX 75201 UNITED STATES luke.ashley@tklaw.com Phone:214-969-1255
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### Applicant Information

Application No	86034552	Publication date	04/15/2014
Opposition Filing Date	04/23/2014	Opposition Period Ends	05/15/2014
Applicant	4th Trimester Fitness, LLC 1135 East Coast Dr Atlantic Beach, FL 32233 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. First Use: 2013/08/10 First Use In Commerce: 2013/08/10  
All goods and services in the class are opposed, namely: pre- and post-natal exercise and fitness classes, seminars, and instructor workshops; and providing information in the fields of pre- and post-natal exercise and fitness via a website

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86070683	Application Date	09/20/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STROLLER STRENGTH		

Design Mark	<h1>Stroller Strength</h1>
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2008/09/01 First Use In Commerce: 2008/09/01 Providing information on fitness in connection to socializing, networking and bonding with children; providing a website featuring educational information in the field of health education in relation to socializing, networking and bonding with children

Attachments	86070683#TMSN.jpeg( bytes ) MLEOPPOSITION.pdf(124696 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ G. Luke Ashley
Name	G. Luke Ashley
Date	04/23/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 80634552

For the mark “Stroller Strong”

Published in the Official Gazette on April 15, 2014

MLE Fitness LLC

*Opposer*

v.

4<sup>th</sup> Trimester Fitness LLC

*Applicant*

**STATEMENT OF GROUNDS FOR OPPOSITION**

Opposer MLE Fitness LLC believes that it will be damaged by approval of application Serial No. 80634552 for registration of the mark “Stroller Strong”, and hereby opposes the application for the following reasons:

1. Applicant 4<sup>th</sup> Trimester Fitness LLC filed Application 80634522 for the mark “STROLLER STRONG” on 8/10/2013 specifying the date of first use as 8/10/2013.
2. Opposer MLE Fitness filed Application 86070683 for the mark “STROLLER STRENGTH” on 9/20/2013 specifying the date of first use as 9/1/2008.
3. By Office Action Letter dated 1/2/2014, the assigned examining attorney at the USPTO for the 86070683 Application advised that no similar registered mark that would bar registration was found in a search of the office’s database. However, the search did disclose the prior and pending 80634552 Application. The examining attorney advised that registration of the STROLLER STRENGTH mark might be refused, because of a likelihood of confusion with the STROLLER STRONG mark.
4. On 2/18/2014 MLE Fitness filed its Response to the 1/2/2014 Letter, pointing out that the date of first use in commerce in its 86070683 Application was at least as early as 9/1/2008, and that the specimens submitted in support of the application

show commercial use of the STROLLER STRENGTH mark in January and February 2012.

5. On 3/12/2014, the assigned examining attorney for the 86070683 Application issued a Suspension Notice suspending action on that application until the 86034552 Application is either registered or abandoned. The Notice incorrectly states that Applicant MLE Fitness LLC “has claimed that because its dates of use predate the referenced application, there is no likelihood of confusion.” That was incorrect. MLE Fitness submitted the evidence of prior use to establish priority precisely because there is a likelihood of confusion.
6. 15 U.S.C. §1052 precludes registration of a mark “which so resembles . . . a mark or trade name previously used in the United States by another and not abandoned, as to be likely to . . . cause confusion, or to cause mistake, or to deceive . . . .” *See Leigh v. Warner Bros., Inc.*, 212 F.3d 1210, 1216-17 (11th Cir. 2000)(use of a potentially confusing mark constitutes infringement of a mark with prior commercial use). The marks “STROLLER STRONG” and “STROLLER STRENGTH” so resemble each other as to be almost certain to cause confusion, to cause mistake, or to deceive within the meaning of §1052.
7. MLE Fitness and its predecessor have been using the STROLLER STRENGTH mark in commerce since at least September 2008. The specimens submitted in support of the 86070683 Application specifically show use of the STROLLER STRENGTH mark in January and February 2012.
8. The fact that the 86034552 Application precedes the filing of the 86070683 Application has no legal significance with regard to priority. It is the date of first use of the similar STROLLER STRENGTH mark that is determinative. The indisputable prior use of the Stroller Strength mark entitles the 86070683 Application to precedence over the 86034552 Application.

9. Because there is an almost certain likelihood of confusion between the Applicant's STROLLER STRONG mark and the Opposer's STROLLER STRENGTH mark, registration of the Applicant's mark would damage MLE Fitness in its business relations with customers, suppliers, and competitors.
10. Because the earlier use of the STROLLER STRONG mark in commerce entitles the 86070683 Application to priority, registration of the 86034552 Application should be refused.

By: /s/ G. Luke Ashley  
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Dated: April 23, 2014

ATTORNEY FOR MLE FITNESS LLC